STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY LEONARD HARDRICK,

Defendant-Appellant.

UNPUBLISHED
September 28, 1999

No. 205747
Jackson Circuit Court
LC No. 97-079851 FH

Before: Murphy, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Defendant was charged with delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). Following a jury trial, defendant was convicted of delivery of less than 50 grams of cocaine and possession of marijuana, but found not guilty of possession with intent to deliver less than 50 grams of cocaine. The trial court sentenced defendant as a second offense habitual offender, MCL 769.10; MSA 28.1082, to concurrent sentences of five to thirty years' imprisonment on the delivery of cocaine conviction and one year imprisonment on the possession of marijuana conviction. Defendant now appeals as of right. We affirm.

Defendant first claims that he was denied his constitutional right to have a fair and impartial trial by a jury of his peers because he is African-American and there were no minority members in the jury array. A challenge to the jury array is timely only if made before the jury has been impaneled and sworn. *People v Hubbard (After Remand)*, 217 Mich App 459, 465; 552 NW2d 493 (1996). Defendant did not challenge the makeup of the venire until after the jury was impaneled and sworn. Therefore, because defendant failed to timely object to the composition of the venire panel or the jury selection system, this issue is not properly before this Court. *Id.*; *People v Dixon*, 217 Mich App 400, 404; 552 NW2d 663 (1996).[1] Moreover, after defendant raised his untimely challenge, he failed to create a factual record to support his claim. Accordingly, defendant has forfeited appellate consideration of this issue. *Dixon*, *supra* at 404.

In a related argument, defendant contends that he received ineffective assistance of counsel due to trial counsel's failure to object to the jury array in a timely manner. However, defendant does not identify this claim in the statement of questions presented in his appellate brief, and therefore, appellate review of this issue is waived. MCR 7.212(C)(5); *People v McMiller*, 202 Mich App 82, 83, n 1; 507 NW2d 812 (1993). In addition, because defendant did not move for a new trial or request a *Ginther*[2] hearing based on ineffective assistance of counsel, *People v Mitchell*, 454 Mich 145, 168-171; 560 NW2d 600 (1997), and because we find no errors apparent in the lower court record, *People v McCrady*, 213 Mich App 474, 478-479; 540 NW2d 718 (1995), we decline to review the merits of defendant's claim.

Defendant next contends that he was denied a fair trial because the trial court abused its discretion when it permitted testimony from police informant Timothy Henson concerning previous drug transactions between Henson and defendant. We disagree.

Initially, we note that defendant did not object to Henson's testimony at trial, and thus, he has waived appellate review of this issue. MRE 103(a)(1); *People v Kilbourn*, 454 Mich 677, 685; 563 NW2d 669 (1997). Furthermore, after reviewing the record, we are not convinced that the admission of Henson's testimony constituted plain error, or that such testimony was decisive of the outcome of the case. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). Accordingly, we decline to further review this unpreserved claim of error.

Finally, defendant asserts that Henson's testimony was inadmissible because it was improperly influenced by the police and the prosecution in violation of the federal bribery statute, 18 USC 201(c)(2), and therefore, his conviction should be reversed and he should be granted a new trial excluding Henson's testimony. We disagree.

As noted above, defendant failed to object to the admission of Henson's testimony or raise the issue of improper influence at trial, and therefore, the issue has been waived on appeal. MRE 103(a)(1); *Kilbourn, supra* at 677. In any event, the federal bribery statute, 18 USC 201(c)(2), cited by defendant is wholly inapplicable to this Michigan prosecution, and the Tenth Circuit Court of Appeals opinion on which defendant relies as support for his position, *United States v Singleton*, 144 F3d 1343 (CA 10, 1998), was recently vacated on rehearing by the en banc court. See *United States v Singleton*, 165 F3d 1297 (CA 10, 1999). Thus, because defendant has not cited, and we have not found, any Michigan authority to support his claim that a witness who has made an agreement with the police has been unlawfully influenced and may not testify at trial, we find no basis for excluding the challenged testimony. Once the agreement between Henson and the police was identified, the weight and credibility of his testimony was properly resolved by the jury. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998); *People v McIntire*, 232 Mich App 71, 102; 591 NW2d 231 (1998). See also *People v Atkins*, 397 Mich 163, 172; 243 NW2d 292 (1976) (issues affecting the credibility of an informant are properly brought to the jury's attention, and nothing prevents a jury from convicting on the basis of the informant's testimony alone.)

Affirmed.

/s/ William B. Murphy
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder

[1] Contemporaneous with his claim of appeal, defendant filed a motion to remand to the trial court to develop a record regarding his claim that there is a systematic exclusion or underrepresentation of minorities on Jackson County juries. On September 1, 1998, this Court denied defendant's motion to remand pursuant to MCR 7.211(C)(1)(a) on the basis that the motion was untimely and because defendant did not present an affidavit or offer of proof regarding the facts to be established at a hearing. *People v Hardick*, unpublished order of the Court of Appeals, entered September 1, 1998 (Docket No. 205747).

[2] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).